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8                   UNITED STATES DISTRICT COURTS  
9                   WESTERN DISTRICT OF WASHINGTON  
10                  AT TACOMA

11                  Larry Darnell Dunomes,

12                  Plaintiff,

13                  v.

14                  Ian Erickson et al.,

15                  Defendants.

16                  CASE NO. 3:19-cv-05319-RJB-JRC

17                  ORDER TO SHOW CAUSE OR  
18                  AMEND COMPLAINT

19                  Plaintiff Larry Darnell Dunomes, proceeding *pro se* and *in forma pauperis*, filed this civil  
20 rights complaint under 42 U.S.C. § 1983. Plaintiff alleges his constitutional rights were violated  
21 when he was denied copies in the prison law library. However, plaintiff has not alleged any  
22 actual injury as a result of defendants' actions. Having reviewed and screened plaintiff's  
23 complaint under 28 U.S.C. § 1915A, the Court declines to serve plaintiff's complaint because  
24 plaintiff has yet to plead sufficient facts to demonstrate that defendants violated his constitutional  
rights. However, the Court provides plaintiff leave to file an amended pleading by June 20, 2019,  
to cure the deficiencies identified herein.

## BACKGROUND

Plaintiff, who is currently housed at Clallam Bay Corrections Center (“CBC”), alleges that on February 7, 2018, defendant Ian Erickson, the CBCC law librarian, denied plaintiff legal copies for “court purposes and for personal recorded copy.” Dkt 6 at 3. Plaintiff alleges that defendant Yvette Stubs, the CBCC legal liaison, “did not try to resolve these issues.” *Id.* Plaintiff alleges that “[a]t this very present time it is impossible to receive copies here at CBCC’s law library without paying for them at that instant.” *Id.*

Plaintiff requests monetary damages. *Id.* at 4.

## DISCUSSION

Under the Prison Litigation Reform Act of 1995 (“PLRA”), the Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must “dismiss the complaint, or any portion of the complaint, if the complaint: (1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or (2) seeks monetary relief from a defendant who is immune from such relief.” *Id.* at (b); 28 U.S.C. § 1915(e)(2); *see Barren v. Harrington*, 152 F.3d 1193 (9th Cir. 1998).

In order to state a claim for relief under 42 U.S.C. § 1983, a plaintiff must sufficiently allege that: (1) he suffered a violation of rights protected by the Constitution or created by federal statute, and (2) the violation was proximately caused by a person acting under color of state law. *See Crumpton v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). The first step in a § 1983 claim is therefore to identify the specific constitutional right allegedly infringed. *Albright v. Oliver*, 510 U.S. 266, 271 (1994). To satisfy the second step, a plaintiff must allege facts

1 showing how individually named defendants caused, or personally participated in causing, the  
2 harm alleged in the complaint. *See Arnold v. IBM*, 637 F.2d 1350, 1355 (9th Cir. 1981).

3 Plaintiff's complaint does not sufficiently allege these claims, which will result in  
4 dismissal of his case if not corrected in an amended complaint.

5 **I. Access to the Courts**

6 Plaintiff contends that defendants violated his right to access to the courts when plaintiff  
7 was denied access to copies free of charge at the CBCC law library. Dkt. 6.

8 Prisoners have a "fundamental constitutional right of access to the courts." *Bounds v.*  
9 *Smith*, 430 U.S. 817, 828 (1977). In *Bounds*, the Supreme Court held the right of access imposes an  
10 affirmative duty on prison officials to assist inmates in preparing and filing legal papers, either by  
11 establishing an adequate law library or by providing adequate assistance from persons trained in  
12 the law. *Id.* at 828. In *Lewis v. Casey*, 518 U.S. 343 (1996), the Supreme Court held a prisoner  
13 must show some actual injury resulting from a denial of access in order to allege a constitutional  
14 violation. *Id.* at 349.

15 To establish he suffered an actual injury, plaintiff must show "actual prejudice with respect  
16 to contemplated or existing litigation, such as the inability to meet a filing deadline or to present a  
17 claim." *Lewis*, 518 U.S. at 348; *Christopher v. Harbury*, 536 U.S. 403, 415, (2002); *Nevada Dep't*  
18 *of Corr. v. Greene*, 648 F.3d 1014, 1018 (9th Cir. 2011); *Phillips v. Hurst*, 588 F.3d 652, 655 (9th  
19 Cir. 2009). The right of access to the courts is limited to non-frivolous direct criminal appeals,  
20 habeas corpus proceedings, and § 1983 cases. *See Lewis*, 518 U.S. at 353 n. 3, 354-55. "Failure to

1 show that a ‘nonfrivolous legal claim has been frustrated’ is fatal to [an access to courts] claim.”  
2 *Alvarez v. Hill*, 518 F.3d 1152, 1155 n. 1 (9th Cir. 2008) (quoting *Lewis*, 518 U.S. at 353 & n. 4).

3 Plaintiff has not alleged any actual injury in this complaint. There are no allegations that  
4 plaintiff was denied access to the courts in a non-frivolous direct criminal appeal, habeas corpus  
5 proceeding, or § 1983 case, nor are there allegations showing that plaintiff had a legal claim  
6 frustrated by the actions of the named defendants. To succeed on an access to the courts claim,  
7 plaintiff must allege in more specific terms what type of claim he was attempting to raise when  
8 he was denied access to the courts and how he suffered an injury based on defendants alleged  
9 actions.

10       II.      Instructions to Plaintiff and the Clerk

11       Due to the deficiencies described above, the Court will not serve plaintiff’s complaint. If  
12 plaintiff intends to pursue a § 1983 civil rights action in this Court, he must file an amended  
13 complaint and within the amended complaint, he must write a short, plain statement telling the  
14 Court: (1) the constitutional right plaintiff believes was violated; (2) the name or names of the  
15 person or persons who violated the right; (3) exactly what each individual or entity did or failed  
16 to do; (4) how the action or inaction of each individual or entity is connected to the violation of  
17 plaintiff’s constitutional rights; and (5) what specific injury plaintiff suffered because of the  
18 individuals’ conduct. *See Rizzo v. Goode*, 423 U.S. 362, 371–72, 377 (1976).

19       Plaintiff shall present the amended complaint on the form provided by the Court. The  
20 amended complaint must be legibly rewritten or retyped in its entirety, it should be an original  
21 and not a copy, it should contain the same case number, and it may not incorporate any part of  
22 the original complaint by reference. The amended complaint will act as a complete substitute for  
23 the original complaint, and not as a supplement. An amended complaint supersedes all previous  
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1      complaints. *Forsyth v. Humana, Inc.*, 114 F.3d 1467, 1474 (9th Cir. 1997) *overruled in part on*  
2      *other grounds, Lacey v. Maricopa County*, 693 F.3d 896 (9th Cir. 2012). Therefore, the  
3      amended complaint must be complete in itself and all facts and causes of action alleged in the  
4      original complaint that are not alleged in the amended complaint are waived. *Forsyth*, 114 F.3d  
5      at 1474. The Court will screen the amended complaint to determine whether it contains factual  
6      allegations linking each defendant to the alleged violations of plaintiff's rights. The Court will  
7      not authorize service of the amended complaint on any defendant who is not specifically linked  
8      to a violation of plaintiff's rights.

9                If plaintiff fails to file an amended complaint or fails to adequately address the issues  
10     raised herein on or before June 20, 2019, the undersigned will recommend dismissal of this  
11     action pursuant to 28 U.S.C. § 1915.

12               The Clerk is directed to send plaintiff the appropriate forms for filing a 42 U.S.C. § 1983  
13     civil rights complaint and for service. The Clerk is further directed to send copies of this Order  
14     and Pro Se Instruction Sheet to Plaintiff.

15               Dated this 20<sup>th</sup> day of May, 2019.

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19               J. Richard Creatura  
20               United States Magistrate Judge  
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